(1) Supreme Court, U.S.
FILED
00 838 NOV 2 2 2000
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

SOUTH FORK BAND OF THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA; MARVIN MCDADE, in his capacity as Chairman of the South Fork Band Council,

Petitioners,

v.

SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF HUMBOLDT, AND THE HONORABLE RICHARD A. WAGNER, DISTRICT JUDGE,

Respondents,

and

STATE ENGINEER of the State of Nevada and WATER COMMISSIONERS of the Sixth Judicial District Court,

Real Parties In Interest.

On Petition For Writ Of Certiorari To The Nevada Supreme Court

PETITION FOR WRIT OF CERTIORARI

RAYMOND RODRIGUEZ, ESQ.
NEVADA LEGAL SERVICES, INC.
111 W. Telegraph, Suite 200
Carson City, Nevada 89703
(775) 883-0404
Counsel of Record for Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

70 pp

QUESTIONS PRESENTED

(1) Where Nevada state water rights are adjudicated to non-Indians and the lands to which the water rights are appurtenant are subsequently purchased by the United States and placed in trust for the South Fork Band of the Te-Moak Tribe of Western Shoshone Indians as a reservation, does the acquisition and use of those waters constitute a waiver of the Tribe's immunity from a suit to declare a water commissioner's right to cross the Reservation to administer the water rights of other parties?

(2) Is the United States an indispensable party to litigation involving the question of whether or not a right of way exists on lands it holds in trust for the South Fork Band of the Te-Moak Tribe?

(3) Where lands and appurtenant water rights are subject to a state water decree while in the hands of private parties are purchased by the United States and placed in trust as a Reservation for the Tribe, does the State of Nevada have an implied right of way across Reservation land to administer the water rights of other parties?

TABLE OF CONTENTS

Page(s)

Opinion Below 1

Jurisdiction 1

Statement of Case 1

A. The South Fork Band of the Te-Moak Tribe of Western Shoshone Indians 2

B. Proceedings Below 4

Reasons for Granting the Petition 6

I. The Nevada Supreme Court Erroneously Implied a Waiver of The Tribe's Immunity From Suit 6

II. The United States Is an Indispensable Party to Litigation Involving Access Across Land It Holds In Trust For an Indian Tribe 10

III. The Supreme Court of Nevada's Decision That A Right of Way Across Tribal Lands May Be Implied Conflicts With Decisions of This Court 12

Conclusion 17

Appendix A (Opinion of the Supreme Court of the State of Nevada, August 24, 2000) A-1

Appendix B (Treaty with the Western Shoshoni) B-1

Appendix C (Deeds) C-1

Appendix D (Bartlett Decree) D-1

Appendix E (Edwards Decree) E-1

TABLE OF AUTHORITIES

Page(s)

CASES

Arizona v. San Carlos Apache Tribe, 463 U.S. 545, 77 L.Ed. 2d 837, 103 S. Ct. 3201 (1983) 8

Bunch v. Cole, 263 U.S. 250, 68 L.Ed. 290, 44 S.Ct. 101 (1923) 15

Fontenelle v. Omaha Tribe of Nebraska, 430 F.2d 143 (8th Cir. 1970) 9

Fredericks v. Mandel, 650 F.2d 144 (8th Cir. 1981) 10

Imperial Granite Co. v. Puyallup Band of Indians, 940 F.2d 1269 (9th Cir. 1991), citing *Carlson v. Tulalip Tribes*, 510 F.2d 1337 (9th Cir. 1975) 11

Kiowa Tribe of Oklahoma v. Manufacture and Technologies, Inc, 523 U.S. 751, 140 L.Ed. 2d 981, 118 S.Ct. 1700 (1998) 7, 8

Mannat v. United States, 951 F.Supp. 172 (E.D. Cal. 1996) 8, 10

Maryland Casualty Co. v. Citizens National Bank of West Hollywood, 361 F.2d 517 (5th Cir.) *cert. denied*, 385 U.S. 918 (1966) 9

McClendon v. United States, 885 F.2d 627 (9th Cir. 1989) 9

Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 71 L.Ed. 2d 21, 102 S.Ct. 894 (1982) 16

Merrion v. Jicarilla Apache Tribe, 617 F.2d 537 (10th Cir. 1980), *aff'd*, 455 U.S. 130 (1982) 9

New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 75 L.Ed. 2d 611, 103 S.Ct. 2378 (1983) 16

Nichols v. Rysavy, 809 F.2d 1317 (8th Cir. 1987) 11

TABLE OF AUTHORITIES – Continued

Page(s)

Smith v. McCullough, 270 U.S. 456, 70 L.Ed. 682, 46 S.Ct. 338 (1926) 15

Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C., 476 U.S. 877, 90 L.Ed. 2d 881, 106 S.Ct. 2305 (1986) 8

United States of America v. Southern Pacific Transportation Company, 543 F.2d 676 (9th Cir. 1976) 14, 15

United States v. Clarke, 445 U.S. 253, 63 L.Ed. 2d 373, 100 S.Ct. 1122 (1980) 12

United States v. Oregon, 657 F.2d 1009 (9th Cir. 1981) 9

Washington v. Confederated Tribes of Colville Reservation, 447 U.S. 134, 65 L.Ed. 2d 10, 100 S.Ct. 2069 (1980) 8

Wichita and Affiliated Tribes of Oklahoma v. Hodel, 788 F.2d 765 (D.C. Cir. 1986) 9

CONSTITUTIONAL AND STATUTORY PROVISIONS

13 United States Statutes at Large (1864), pp. 30-32 2

25 C.F.R. 11.100(a)(4) 3

25 C.F.R. 169.3 12

25 U.S.C. § 323 12

25 U.S.C. § 2701(d)(7)(A)(ii) 8

25 U.S.C. § 324 12

25 U.S.C. § 450f(c)(3) 8

25 U.S.C. §§ 81 & 84 15

28 U.S.C. § 1257 1

TABLE OF AUTHORITIES – Continued

Page(s)

43 U.S.C. § 666 8

65 Fed. Reg. 13301 (3/13/00) 3

NRS 321.5963 13

NRS 321.655 13

NRS 408.078 13

NRS 533.305 13

OTHER AUTHORITIES

American Indian Reservation Trust Areas, Veronica E. Velarde Tiller, Editor, US Department of Commerce (1996) 16

Crum, Steven J., "The Road on Which We Came – Po'i pentum tammen kimmapeah; a history of the Western Shoshone" University of Utah Press, Salt Lake City (1994) 16

NUMA: Northern Paiute History, University of Utah Printing Service (1976), p. 59 16

PETITION FOR WRIT OF CERTIORARI TO THE NEVADA SUPREME COURT

TO THE SUPREME COURT:

Petitioners, South Fork Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada and Marvin McDade, in his capacity as Chairman of the South Fork Band Council (collectively the "Tribe"), respectfully petition this Court for a writ of certiorari to the Supreme Court of the State of Nevada.

OPINION BELOW

The Opinion of the Supreme Court of the State of Nevada, review of which is sought by this petition is reproduced in an appendix hereto ("App.") at A-1 to A-10.

JURISDICTION

The opinion of the Supreme Court of the State of Nevada was entered on August 24, 2000. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257.

STATEMENT OF CASE

The decision of the Supreme Court of the State of Nevada holds, for the first time, that an Indian Tribe, by virtue of acquiring equitable title to water, has waived its federal common law immunity from a suit to compel it to

allow state access across the Reservation to administer the water rights of a third party, that the United States is not an indispensable party to such a suit, and that state law applies to grant an easement across Reservation lands. The following facts underlie the decision.

A. The South Fork Band of the Te-Moak Tribe of Western Shoshone Indians.

The United States of America and the Western Shoshone Indians entered into treaty in 1863[1]. This treaty was entered into prior to the State of Nevada achieving statehood in 1864[2]. The treaty provided for the establishment of reservations within the territory of Nevada at some future date[3].

Subsequently, the United States set about purchasing private ranches for the purpose of creating a land base for a reservation for the South Fork Band of the Te-Moak

---

[1] Treaty with the Western Shoshoni, 1863. Oct. 1, 1863. 18 Stats., 689. Ratified June 26, 1866. Proclaimed Oct. 21, 1869. App. at B-1 to B-5.

[2] 13 United States Statutes at Large (1864), pp. 30-32.

[3] Article 6. The said bands agree that whenever the President of the United States shall deem it expedient for them to abandon the roaming life, which, they now lead, and become herdsmen or agriculturalists, he is hereby authorized to make such reservations for their use as he may deem necessary within the country above described; and they do also hereby agree to remove their camps to such reservations as he may indicate, and to reside and remain therein.

Tribe of Western Shoshone Indians[4]. Each of the deeds provide that the purchase of land includes all water rights associated with the land. Nowhere in the deeds is there a provision establishing jurisdiction in any court. Nowhere in any of the deeds is there an express easement across these lands granted to anyone. While in private hands, the water rights had been adjudicated in a State proceeding which led to the entry of the "Humboldt Decree." Ultimately, the Tribe's reservation was created by Proclamation on February 8, 1941.

Today, the federally recognized Tribe's[5] reservation consists of approximately 15,680.38 acres of land located approximately 30 miles south of Elko, Nevada held in trust by the United States. A Court of Indian Offenses established by federal regulation[6] for the Te-Moak Tribes exists and is the primary entity used to resolve legal conflicts for the Tribe.

There are no State roads on the tribe's reservation. There are no federal rights of way across the reservation. There exists only one main paved tribally maintained road which intersects State Route 228 which goes to Lee, Nevada. In 1990, there were 268 enrolled Tribal members of which 101 resided on the reservation. In November 1999 a state water commissioner sought to cross the Reservation for purposes of accessing off-Reservation stream diversions, the Tribe ejected the water commissioner from

---

[4] The United States purchased 5,862.28 acres on May 29, 1937, 2,195.63 acres on March 31, 1938, 1,514.96 on November 14, 1938, May 24, 1932, and May 16, 1934. App. C-1 to C-21.

[5] 65 Fed. Reg. 13301 (3/13/00).

[6] 25 C.F.R. 11.100(a)(4).

the Reservation. The Nevada State Engineer then commenced a contempt proceeding in the Nevada State District Court.

B. Proceedings Below

This application for a writ arises from a proceeding initiated on November 5, 1999, in the Sixth Judicial District Court, Humboldt County, State of Nevada entitled *State Engineer, et al. v. South Fork Band of Te-Moak Tribe of Western Shoshone Indians of Nevada*, Case No. 2804-3. That Petition alleged that the Tribe and its chairman should be held in contempt for excluding the State Water Commissioner from the Tribe's Reservation when he attempted to cross the Reservation to reach private lands.[7] On January

---

[7] This matter is just part of complex litigation between the State Engineer and the South Fork Band. The litigation began with a Petition for an Order to Show Cause and Order to Show Cause in August 1998 filed in state court against the Tribe. This litigation was subsequently removed to the United States District Court by the United States of America after it was joined as a party. The State Engineer's motion for remand was denied. The State Engineer moved in federal court for a Preliminary Injunction and the Tribe was enjoined from barring the State Engineer or its agents from accessing water diversions within the Tribe's Reservation. However, the United States District Court specifically denied a request to enjoin the Tribe from barring access across the Reservation. The Water Commissioner then sought access from the Tribe for that purpose but access was denied. That exclusion led to the challenged Petition for an Order to Show Cause being filed in the Sixth Judicial District Court of the State of Nevada. The Tribe moved, in the removed federal court action for an injunction barring the newly filed state court proceeding. The Tribe's motion was denied as being a proceeding separate and

12, 2000, the parties were advised by the Sixth Judicial District Court that a hearing would be held on January 26, 2000. On January 21, 2000, the Tribe served and filed a Motion to Dismiss the Petition for Order to Show Cause based on that court's lack of subject matter jurisdiction. On January 26, 2000, the hearing took place before the Honorable Richard A. Wagner. The Motion to Dismiss was denied from the bench. On February 2, 2000, the Honorable Richard A. Wagner issued his order denying the Tribe's Motion to Dismiss in Case No. 2804-3 holding that the Tribe has waived its immunity from suit in state court, that state law applied on the Tribe's Reservation and that the United States is not an indispensable party. The court then scheduled a hearing to take place on February 28, 2000, to show cause why the Tribe should not be held in contempt.

The Tribe filed an emergency petition for writ of prohibition with the Supreme Court of the State of Nevada on February 4, 2000. A stay was issued pending resolution of the Writ of Prohibition. On June 14, 2000, oral argument was had before the Supreme Court of the State of Nevada and a decision was rendered denying the petition for writ of prohibition by order of the Supreme Court of the State of Nevada on August 24, 2000.

---

apart from the removed federal court action. Ultimately, the United States District Court remanded that case to the state court and both the Tribe and the United States have appealed that determination to the Ninth Circuit Court of Appeals.

REASONS FOR GRANTING THE PETITION

The decision for which review is sought presents to this Court several important issues of first impression. This case presents the important question of whether or not the purchase of private lands by the United States with appurtenant state water rights, all of which are then placed in trust as a Reservation for the Tribe, waives the Tribe's sovereign immunity from state court jurisdiction in an action seeking access across the Reservation to administer the water rights of non-Indians residing off the reservation. The Nevada Supreme Court's decision finding jurisdiction in these circumstances is inconsistent with this Court's precedent concerning waiver of sovereign immunity. Even if the Tribe may be joined in such a suit, the decision presents to this Court the question of whether or not the United States is an indispensable party to litigation that essentially establishes an easement across lands that are held in trust for an Indian Tribe. Finally, the case presents the issue of whether the fact that the land was once subject to state jurisdiction while in private hands means that the State of Nevada has a right of way over such lands once they are part of a Reservation held in trust by the United States.

I. THE NEVADA SUPREME COURT ERRONEOUSLY IMPLIED A WAIVER OF THE TRIBE'S IMMUNITY FROM SUIT.

The Nevada Supreme Court has essentially implied a waiver of tribal sovereign immunity, not from an express writing by the Tribe to that effect, but rather from the acts

of the United States in purchasing lands with appurtenant state water rights, which subsequently formed the Tribe's reservation, and from the Tribe's subsequent use of the water.

> We conclude that the purchase of the reservation land subject to previously adjudicated water rights constituted an express waiver of sovereign immunity, and that the Tribe's actions in benefitting from the abiding by the Humboldt Decree for more that [sic] five decades served to ratify this waiver.

(App. A-7)

An implied waiver is the most that court could find since neither the United States nor the Tribe has ever passed any law or executed any document relevant to this case evincing an express waiver of tribal sovereignty. All deeds of conveyance and other congressional and executive branch documents relevant to this land and water transaction are silent on the subject of tribal sovereign immunity. The law of this Court is that immunity waivers cannot be implied in such a backhanded fashion.

In *Kiowa Tribe of Oklahoma v. Manufacture and Technologies, Inc*, 523 U.S. 751, 140 L.Ed. 2d 981, 118 S.Ct. 1700 (1998), this Court reversed a state court's ruling that an Indian Tribe's sovereign immunity was waived when it entered into contracts off the reservation.

> As a matter of federal law an Indian Tribe is subject to suit only where Congress authorizes suit or the Tribe has waived its immunity.

523 U.S. 751, 755.

This Court also ruled that,

> . . . tribal immunity is a matter of federal law and is not subject to diminution by the states. *Three Affiliated Tribes, supra,* at 891; *Washington v. Confederated Tribes of Colville Reservation,* 447 U.S. 134, 154, 65 L.Ed. 2d 10, 100 S.Ct. 2069 (1980).

523 U.S. 751, 756.

This Court ruled that only Congress or the Tribe itself can waive the Tribe immunity from suit.[8] The State Supreme Court erroneously relies on the fact that water rights were previously adjudicated. But that did not happen in a general stream adjudication to which either the immunity of the United States or the Tribe was waived. Indeed, the McCarran Amendment, 43 U.S.C. § 666[9] had not even been passed by the time of the adjudication. This Court ruled in *Arizona v. San Carlos Apache Tribe,* 463 U.S. 545, 567 fn. 17, 77 L.Ed. 2d 837, 103 S.Ct. 3201 (1983) that the McCarran Amendment did not waive an Indian Tribe's sovereign immunity from suit as a party to such a proceeding.

---

[8] This Court also noted that Congress had, in the past, enacted several laws which limited an Indian Tribe's liability from suit. 25 U.S.C. § 450f(c)(3), 25 U.S.C. § 2701(d)(7)(A)(ii).

[9] It is not clear whether or not Congress has waived the United States' immunity from suit in a subsequent enforcement action. Nor is it clear whether or not the United States' immunity from suit is waived in an enforcement action if the original adjudication of the water rights in question occurred prior to the passage of the McCarran Amendment, *see, Mannat v. United States,* 951 F.Supp. 172 (E.D. Cal. 1996).

Consequently, there is no specific congressional abrogation of the Tribe's immunity from suit. The only expression of Congressional waivers of immunity addressing water rights adjudications has been found by this Court not to apply to a Tribe. Given that Congress has not waived the Tribe's immunity, the only other way the Tribe's immunity could be deemed to be waived is if the Tribe itself expressly waives it.[10] In this case, the Supreme Court of the State of Nevada implied a waiver based on actions of the United States of America and by the Tribe. Nowhere, has the Tribe clearly and unequivocally stated in writing its consent to be sued. Moreover, the Tribe has taken no other affirmative action that some courts have held to amount to an express waiver. For example, the

---

[10] Several circuit courts have identified circumstances in which Tribes could themselves waive their immunity from suit. *See, McClendon v. United States*, 885 F.2d 627, 630-631 (9th Cir. 1989) (A Tribe may waive its immunity by written language in a stipulated dismissal, settlement documents or in a lease but not necessarily by initiating litigation.), *Merrion v. Jicarilla Apache Tribe*, 617 F.2d 537, 540 (10th Cir. 1980), *aff'd*, 455 U.S. 130 (1982) (A Tribe may waive its immunity by enacting an ordinance consenting to suit in a particular court.), *United States v. Oregon*, 657 F.2d 1009 (9th Cir. 1981) (A Tribe may waive its immunity by voluntarily intervening in litigation and by written language in a settlement agreement agreeing to submit future controversies to a federal court.); *Wichita and Affiliated Tribes of Oklahoma v. Hodel*, 788 F.2d 765 (D.C. Cir. 1986) (A Tribe may waive its immunity by voluntarily intervening as a party defendant.); *Maryland Casualty Co. v. Citizens National Bank of West Hollywood*, 361 F.2d 517 (5th Cir.), *cert. denied*, 385 U.S. 918 (1966) (A Tribe may waive its immunity by written language in a corporate charter but only if it is clear.); *Fontenelle v. Omaha Tribe of Nebraska*, 430 F.2d 143 (8th Cir. 1970) (A Tribe may waive its immunity by written language in a corporate charter).

Tribe has neither, intervened as a party in litigation, nor agreed in writing to submit disputes to a particular court, enacted on ordinance waiving its immunity or agreed to arbitrate disputes in a particular forum.

In holding that there was a waiver of sovereign immunity in the facts of this case, the Nevada Supreme Court contravened the clear directives of this Court.

II. THE UNITED STATES IS AN INDISPENSABLE PARTY TO LITIGATION INVOLVING ACCESS ACROSS LAND IT HOLDS IN TRUST FOR AN INDIAN TRIBE.

The proceeding brought in state court essentially claims that the State has a right of way based on the Humboldt Decree across the Tribe's reservation. Otherwise the Tribe would be free to exercise its right to exclude others from the reservation and could not be held in contempt for so doing. The Tribe can only be held in contempt if the asserted right of way is valid. The United States is the title owner of the land on which the Petitioners' reservation sits and it holds the land in trust. As trustee of the land, the United States has an interest in the outcome of litigation that asserts a right of way across that land. As was held by the Eighth Circuit in *Fredericks v. Mandel*, 650 F.2d 144, 145 (8th Cir. 1981), "A proceeding against property in which the United States has an interest is a suit against the United States."

In *Mannat v. United States*, 951 F. Supp. 172 (E.D. Cal. 1996), a private party sought administration of water rights decree against the United States as trustee of an Indian Reservation. The court ruled that,

> The United States is an indispensable party to this claim. As discussed above, the inability to join the United states as an indispensable party must result in dismissal. *Imperial Granite Co. v. Puyallup Band of Indians*, 940 F.2d 1269, 1271 n.4 (9th Cir. 1991), citing *Carlson v. Tulalip Tribes*, 510 F.2d 1337, 1339 (9th Cir. 1975).

The Eighth Circuit in *Nichols v. Rysavy*, 809 F.2d 1317 (8th Cir. 1987), held the United States to be an indispensable party when its interest would be affected by the outcome of litigation and then dismissed the proceeding.

The proceedings in state court did not join the United States as a party. The Tribe moved to dismiss on the grounds that an indispensable party was not joined. In denying the petition for writ of prohibition, the Supreme Court of Nevada ruled,

> Finally, petitioner's contention that the district court lacks jurisdiction over the contempt proceeding because the United States is an indispensable party and has not been joined is without merit. The actions giving rise to the contempt proceedings are those of petitioners, not the United States. Petitioners, not the United States created and adopted the resolutions that frustrated and interfered with the water commissioners' efforts to regulate the Humboldt River. Although the United States, as trustee, is the legal owner of the property and accompanying water rights, *see* Appropriations Act for the Department of the Interior, Pub. L. No. 68-580, 43 Stat. 1141, 1149 (1925); proclaiming certain lands in Nevada to be an Indian reservation, 6 Fed. Reg. 1203 (1941), the interest of the United States will not be affected by the contempt proceedings. Consequently, we conclude that the

district court does have jurisdiction because the United States has not been joined as a party to the contempt proceedings.

The interest of the United States in protecting Tribal lands from unauthorized rights of way is codified at 25 U.S.C. § 324[11] which provides that no right of way across Indian lands, "shall be made without the consent of the proper Tribal officials" and that no right of way is valid, "without the prior written consent of the Tribe". To the extent that the Supreme Court of the State of Nevada has determined that it was the purchase of the private lands by the United States that granted such a right of way over the Tribe's reservation, the United States is an indispensable party in determining whether or not such a right of way is valid. In addition, since the United States holds the water rights in trust, it is an indispensable party to an action affecting those rights.

III. THE SUPREME COURT OF NEVADA'S DECISION THAT A RIGHT OF WAY ACROSS TRIBAL LANDS MAY BE IMPLIED CONFLICTS WITH DECISIONS OF THIS COURT.

A fundamental principle of federal Indian law is that a right of way over land held in trust by the United States cannot be gained by implication, *United States v. Clarke*, 445 U.S. 253, 63 L.Ed. 2d 373, 100 S.Ct. 1122 (1980). The Nevada Supreme Court has essentially implied a right of

---

[11] 25 U.S.C. § 323 authorizes the Secretary of the Interior to grant rights of way over Indian lands. However, 25 C.F.R. 169.3 provides that no right of way be granted over Indian lands without the consent of the Tribe.

way based on the United States' purchase of the land with the appurtenant water rights attached and the Tribe's acquiescence to state personnel's accessing the reservation. In this case, the Tribe has never expressly consented to a right of way over its lands. At best the Tribe's acquiescence over the past years is a license which can be revoked.

Prior to the creation of the Tribe's reservation, there existed no authority for state water enforcement personnel to cross the property of one land holder to reach the property of another for the purposes of water rights administration[12]. The Humboldt Decree itself is silent on

---

[12] Indeed, it was not until 1951 (1951 Statutes of Nevada 132, 135), ten years after the creation of the Tribe's reservation that the Nevada State Legislature amended NRS 533.305, by adding subsection 3, which provided,

> Whenever, in pursuance of his duties, the water commissioner regulates a head gate to a ditch of the controlling works of reservoirs, he shall attach such head gate or controlling works a written notice properly dated and signed, setting forth the fact that such head gate or controlling works has been properly regulated and is wholly under his control. Such notice shall be a legal notice to all parties interested in the diversion and distribution of the water of such ditch or reservoir. **Such water commissioner shall have the right of ingress and egress across and upon a public, private or corporate lands at all times in the exercise of his duties.** (Emphasis added).

The terms "public, private or corporate lands" are not defined in NRS 533.305. However, they are defined in several other Nevada statutes such as NRS 321.5963, NRS 321.655 and NRS 408.078. In each of these statutes, lands held in trust for Indian purposes or are Indian reservations are excluded from the

this point[13]. Additionally, the deeds of the property purchased by the United States say nothing about right of way across those lands.

In reaching its conclusion that the Tribe has waived its sovereign immunity, the Nevada Supreme Court relies heavily upon the Tribe's abiding by the Humboldt Decree, using the water and allowing the water commissioner to travel across the reservation for over 50 years. What this conclusion ignores is the principle that rights of way across Indian land cannot be inferred and the allowance of a Tribe of an activity over a period of time does not constitute the granting of a right of way.

The Ninth Circuit Court of Appeals addressed a similar issue in *United States of America v. Southern Pacific Transportation Company*, 543 F.2d 676 (9th Cir. 1976). In that case, the Ninth Circuit reversed the lower court's determination that the construction of a railroad across a tribe's reservation, the failure of the Indians to object for over 90 years and the acceptance of consideration amounted to an implied license for a right of way over

---

definition of public lands. Arguably the Nevada statutory authority for crossing the Tribe's reservation is by its own terms inapplicable.

In essence, the state has rendered itself a right of way over the Tribe's reservation either by implication prior to the creation of the reservation or by legislative enactment after the creation of the reservation. Neither passes muster under federal law.

[13] The ordering paragraphs of the Humboldt Decree, which consist of both the Bartlett (App. D-1 to D-9) and Edwards Decree (App. E-1 to E-2) say nothing about a right of way across any lands subject to the Humboldt Decree.

the tribal land. In reversing that decision, the Ninth Circuit relied by analogy upon this Court's holding in *Bunch v. Cole*, 263 U.S. 250, 68 L.Ed. 290, 44 S.Ct. 101 (1923) and *Smith v. McCullough*, 270 U.S. 456, 70 L.Ed. 682, 46 S.Ct. 338 (1926). The Ninth Circuit held that,

> A license may not be inferred as an implied-in-fact contract because of the failure of Southern Pacific to comply with 25 U.S.C. §§ 81 & 84, which govern contracts with Indian tribes.

543 F.2d 676, 697.

There as here, a right of way over Indian lands was sought to be established by implication based in part upon long standing Tribal acquiescence to a right of way even though that right of way was not properly acquired. In this case, a right of way across the Tribe's reservation has never been expressly consented by the Tribe. Accordingly, the Tribe's non-objection to the water commissioner's crossing its reservation for almost 50 years is at best a license which could be revoked at any time. Such a conclusion was deemed by the Ninth Circuit to be consistent with this Court's ruling in *Bunch, supra*, where this Court voided leases granted by Indians granted to non-Indians even after a significant period of time has passed because the leases were never valid in the first instance. As the Ninth Circuit ruled in *Southern Pacific, supra*,

> Although it may appear harsh to condemn an apparently good-faith use as a trespass after 90 years of acquiescence by the owners, we conclude that an even older policy of Indian law compels this result.

543 F.2d 676, 699.

The Nevada Supreme Court's decision is especially egregious because it denies even the most basic of tribal powers over their reservation – the power to exclude outsiders from entering. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 71 L.Ed. 2d 21, 102 S.Ct. 894 (1982); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 333, 75 L.Ed. 2d 611, 103 S.Ct. 2378 (1983) ("A Tribe's power to exclude nonmembers entirely or to condition their presence on the reservation is equally well established.").

The issues presented in this case are not unique to the South Fork Band. Two other Tribes in Nevada had their reservations created by the purchase of private lands with appurtenant water rights by the United States. The Duckwater Reservation was created by the purchases of two private ranches in 1940[14]. The Yomba Reservation was created by the purchase of two private ranches in 1937.[15] A large part of the Yerington Paiute Reservation was created by the purchase of private lands with appertunent decreed water rights.[16]

The decision of the Nevada Supreme Court cannot be allowed to stand.

---

[14] Crum, Steven J., "The Road on Which We Came – Po'i pentum tammen kimmapeah; a history of the Western Shoshone" University of Utah Press, Salt Lake City (1994) p. 96.

[15] Crum, *supra*, p. 95 and American Indian Reservation Trust Areas, Veronica E. Velarde Tiller, Editor, US Department of Commerce (1996) p. 431.

[16] NUMA: Northern Paiute History, University of Utah Printing Service (1976), p. 59.

CONCLUSION

This petition presents issues of first impression. The Supreme Court of the State of Nevada has boldly implied a waiver of the Tribe's sovereign immunity from acts of the United States and the Tribe. While this Court has repeatedly held that such a waiver cannot be implied, it has yet to rule in a case where a waiver has, in fact, been implied by a lower court.

The Supreme Court of the State of Nevada has also allowed litigation involving rights of way across trust land to proceed against a Tribe without joinder of the United States, the legal owner of the property.

Lastly, the Supreme Court of the State of Nevada has essentially implied a right of way over Indian trust lands in disregard of this Court's precedent.

Review by this Court is important because other Indian reservations in Nevada have been created by the purchase of private lands by the United States with appurtenant water rights. As such, similar issues may arise in the future. Moreover, as more and more Indian tribes purchase private lands to add to their land bases similar issues will arise.

For the reasons argued herein, it is respectfully requested that this Court grant the petition for a writ of certiorari.

Respectfully submitted,

RAYMOND RODRIGUEZ, ESQ.
Council for Petitioners

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOUTH FORK BAND OF THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA; MARVIN MCDADE, IN HIS CAPACITY AS CHAIRMAN OF THE SOUTH FORK BAND COUNCIL, Petitioners, vs. THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF HUMBOLDT, AND THE HONORABLE RICHARD A. WAGNER, DISTRICT JUDGE, Respondents, and STATE ENGINEER OF THE STATE OF NEVADA AND WATER COMMISSIONERS OF THE SIXTH JUDICIAL DISTRICT COURT, Real Parties in Interest.	No. 35591

(Filed Aug. 24, 2000)

Original petition for writ of prohibition seeking to prevent the district court from proceeding on a petition

for an order requiring petitioners to show cause why they should not be held in contempt for interfering with the state engineer and water commissioners in regulating adjudicated water rights along the Humboldt River.

Petition denied.

Nevada Legal Services and Raymond Rodriguez, Carson City, for Petitioners.

David G. Allison, District Attorney, Humboldt County, for Respondents.

Frankie Sue Del Papa, Attorney General, and Paul G. Taggart, Deputy Attorney General, Carson City, for Respondents and Real Parties in Interest.

BEFORE THE COURT EN BANC.

OPINION

PER CURIAM:

This is an original petition for writ of prohibition seeking to prevent the district court from proceeding on a petition for an order requiring petitioners to show cause why they should not be held in contempt for interfering with the state engineer and water commissioners in regulating adjudicated water rights along the Humboldt River. Petitioners contend that the district court lacks jurisdiction based on sovereign immunity.

We conclude that petitioners waived sovereign immunity when the United States purchased, and petitioners took, the reservation land subject to previously adjudicated water rights. Petitioners ratified this waiver

by their historical compliance with the Humboldt Decree, including paying assessment fees and permitting the state engineer and water commissioners access to the reservation. Consequently, petitioners are subject to the jurisdiction of the Sixth Judicial District Court, and we therefore deny the petition for writ of prohibition.

In 1913, the state engineer initiated water rights adjudication procedures for the Humboldt River. See Ormsby County v. Kearney, 37 Nev. 314, 142 P. 803 (1914). The state engineer issued an order of determination for the Humboldt River in 1923. As part of the adjudication, the Sixth Judicial District Court decreed water rights to five ranches. In 1935, the Sixth Judicial District Court amended the decree, completing its adjudication of water rights for the Humboldt River. This decree became known as the Humboldt Decree, and thereafter, the state engineer and the water commissioners were responsible for distributing the water rights adjudicated under the Decree. Subsequently, between 1937 and 1942, the United States purchased the five ranches to form the South Fork Reservation for the Te-Moak Tribe of the Western Shoshone Indians (the tribe).

For approximately fifty-five years, the tribe cooperated with the state engineer and water commissioners, allowing them access onto the reservation. In particular, the tribe allowed the state engineer and water commissioners to enter the reservation and to traverse the reservation to reach private lands on which diversions that served the tribe's water rights, as well as other landowners' rights, were located. It appears from the documentation submitted to this court that the United States paid the assessment fees for a period of time in the 1970s

and early 1980s, and that the tribe paid the assessment fees from the mid-1980s until at least the early 1990s. However, on March 8, 1998, the tribe adopted two resolutions decreeing that water commissioners would not be allowed to enter the reservation and that the tribe would not pay assessment fees that were charged against every holder of water rights in the Humboldt River.

Subsequently, and at different times, the state engineer and water commissioners of the Sixth Judicial District Court filed three contempt proceedings in the Sixth Judicial District Court.[1] We are presently concerned with the third contempt proceeding, which is the subject of this petition. In that contempt proceeding, the state engineer sought an order from the district court directing petitioners to show cause why they should not be held in contempt for frustrating the water commissioners' enforcement of the Humboldt Decree, specifically regarding an incident that occurred on September 13, 1999.

---

[1] The first contempt proceeding (Humboldt I) was filed against petitioners, but was subsequently amended to name the United States as a respondent. The United States filed a notice of removal, removing the proceeding to federal court. The federal court denied the state's motion to remand the case to state court. *See* State Engineer v. South Fork Band of Te-Moak Tribe, 66 F. Supp. 2d 1163 (D. Nev. 1999). The state engineer also filed a separate contempt proceeding (Humboldt II) in the Sixth Judicial District Court against the United States in an effort to compel the United States to pay the assessment fees. Again, the United States filed a notice of removal to federal court. The state engineer filed a motion to remand the proceedings to state court. At the time this petition for writ of prohibition was filed, the state engineer's motion to remand remained pending in federal court.

On September 13, 1999, Wayne Testolin, a supervising water commissioners [sic], and two other water commissioners entered the reservation to reach a private ranch adjacent to the reservation, known as the Gund Ranch, for the purpose of regulating the river pursuant to the Humboldt Decree. Some of the tribe's water rights are served by diversions located on the Gund Ranch. Consequently, to properly control the tribe's water rights, as well as water rights for other private landowners, the diversions located on the Gund Ranch must be adjusted.[2] When the water commissioners entered the reservation, they were followed by a tribal peace officer. The water commissioners traveled off the reservation and onto the Gund Ranch, where they were stopped by the tribal peace officer and Mr. Marvin McDade, chairman of the South Fork Band Council, and escorted back to the tribal office on the reservation. Mr. Testolin was handcuffed, charged with trespass and escorted off the reservation.

On November 9, 1999, the state engineer and water commissioners of the Sixth Judicial District Court petitioned the district court for an order to show cause why the tribe and Mr. McDade should not be held in contempt for interfering with the water commissioners' authority to regulate the Humboldt River. The tribe and Mr. McDade filed a motion to dismiss the petition, which the district court denied. The tribe and Mr. McDade then filed this petition for a writ of prohibition to prevent the district

---

[2] The state engineer and water commissioners contend that they cross the reservation to reach the Gund Ranch because it provides the most reasonable access to the ranch.

court from proceeding with a contempt hearing, contending that the district court lacks jurisdiction over the tribe and Mr. McDade, in his official capacity, and that the United States is an indispensable party to the district court contempt proceedings.

Turning to the issue of the district court's jurisdiction over the tribe, "[i]t is well established that Indian tribes possess the same common-law immunity from suit traditionally enjoyed by sovereign powers." Val-U Constr. Co. v. Rosebud Sioux Tribe, 146 F.3d 573, 576 (8th Cir. 1998); *accord* Blatchford v. Native Village of Noatak, 501 U.S. 775 (1991); Pan American Co. v. Sycuan Band of Mission Indians, 884 F.2d 416, 418 (9th Cir. 1989). However, sovereign immunity can be waived. *See* Puyallup Tribe v. Washington Game Dept., 433 U.S. 165 (1977). Such a waiver may not be implied, but must be expressed unequivocally. *See* Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58-59 (1978). A waiver does not require the invocation of "magic words" indicating that a tribe has waived its sovereign immunity. *See Val-U Constr. Co.*, 146 F.3d at 577.

Generally, without congressional authority, Indian tribes are exempt from suit. *See Santa Clara*, 436 U.S. at 58. However, some courts have concluded that a tribe, by its actions, may consent to suit without express congressional authority. For example, in United States v. Oregon, 657 F.2d 1009, 1013-16 (9th Cir. 1981), the court held that an Indian tribe may consent to suit without express congressional authority, and that a tribe's intervention in establishing its fishing rights constituted consent to the district court's jurisdiction to issue and modify an equitable decree that encompassed tribal rights. *See also*

McClendon v. United States, 885 F.2d 627, 629 n.1 (9th Cir. 1989) (stating that initiation of litigation by the United States in its capacity as tribal trustee could potentially result in a waiver of tribal immunity despite the fact that the tribe was not a party to the suit); Native Village of Eyak v. GC Contractors, 658 P.2d 756 (Alaska 1983) (determining that an Indian tribe waived its sovereign immunity from suit without obtaining congressional authority by entering into an agreement containing an arbitration clause).

In this case, the tribe is the successor-in-interest to owners of Humboldt Decree water rights and has enjoyed the benefits of the Decree. Until 1998, water commissioners entered the reservation without interference to regulate the Humboldt River to ensure that all users received their decreed water rights. For the past fifty-five years, the tribe allowed the water commissioners to travel on and across the reservation, and the tribe paid assessment fees pursuant to the Decree for some period of time between the mid-1980s and early 1990s. Finally, the deeds to the property the United States purchased for the tribe specifically mention the appurtenant water rights and/or the Humboldt Decree. We conclude that the purchase of the reservation land subject to previously adjudicated water rights constituted an express waiver of sovereign immunity, and that the Tribe's actions in benefiting from and abiding by the Humboldt Decree for more that [sic] five decades served to ratify this waiver. *See* State Engineer v. South Fork Band of Te-Moak Tribe, 66 F.Supp.2d at 1163, 1172 (D.Nev.1999) (stating that "[i]f there remain[s] any doubt as to the United States[']s express and unequivocal waiver in behalf of the Tribe, in its initial purchase of

the decreed rights, the Tribe's actions over the ensuing fifty years since the purchase of their decreed water rights clearly demonstrate a continuing ratification of its initial waiver of immunity").

We have recognized that the Sixth Judicial District Court has continuing jurisdiction over matters arising out of the administration of the Humboldt Decree. State Engineer v. Sustacha, 108 Nev. 223, 826 P.2d 959 (1992). The Sixth Judicial District Court has the authority to hold in contempt those who interfere with or frustrate the actions of the state engineer or water commissioners in the administration of the Humboldt Decree. State v. District Court, 52 Nev. 270, 286 P. 418 (1930).

The tribe enjoys sovereign immunity, and thus, generally, cannot be subjected to the jurisdiction of a state court. *See, e.g.*, Snooks v. District Court, 112 Nev. 798, 919 P.2d 1064 (1996) (holding that a Nevada state court had no jurisdiction to entertain a civil action filed by a non-Indian against an Indian for events that occurred on Indian land); Patterson v. Four Rent, Inc., 101 Nev. 651, 707 P.2d 1147 (1985) (holding that a Nevada state court had no jurisdiction over Indian claims to land allotments). However, here, as the purchase of the tribe's reservation land subject to the Humboldt Decree, constituted a waiver of sovereign immunity, the Sixth Judicial District Court is within its authority in exercising jurisdiction over the tribe concerning its alleged interference with the administration of water rights pursuant to the Decree. To hold that the tribe is not amenable to the jurisdiction of the Sixth Judicial District Court under these circumstances would frustrate the district court's

authority over matters arising out of the administration of the Decree.

Finally, petitioners' contention that the district court lacks jurisdiction over the contempt proceeding because the United States is an indispensable party and has not been joined is without merit. The actions giving rise to the contempt proceedings are those of petitioners, not the United States. Petitioners, not the United States, created and adopted the resolutions that frustrated and interfered with the water commissioners' efforts to regulate the Humboldt River. Although the United States, as trustee, is the legal owner of the property and accompanying water rights, *see* Appropriations Act for the Department of the Interior, Pub. L. No. 68-580, 43 Stat. 1141, 1149 (1925); Proclaiming Certain Lands in Nevada to be an Indian Reservation, 6 Fed. Reg. 1203 (1941), the interests of the United States will not be affected by the contempt proceedings. Consequently, we conclude that the district court does have jurisdiction because the United States has not been joined as a party to the contempt proceedings.

A writ of prohibition may issue to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the district court. NRS 34.320; *see* Budget Rent-A-Car v. District Court, 108 Nev. 483, 835 P.2d 17 (1992). We have held that a writ of prohibition is an appropriate vehicle through which to challenge the district court's improper exercise of jurisdiction. *See* Indiana Ins. Co. v. District Court, 112 Nev. 949, 920 P.2d 514 (1996); Phelps v. District Court, 106 Nev. 917, 803 P.2d 1101 (1990).

Here, since petitioners waived their sovereign immunity, we conclude the Sixth Judicial District Court has jurisdiction over petitioners in the underlying contempt proceedings. Consequently, we are not satisfied that this court's intervention by way of extraordinary relief is warranted at this time. We therefore deny the petition.[3]

/s/ Rose, C.J.
Rose

/s/ Young, J.
Young

/s/ Maupin, J.
Maupin

/s/ Shearing, J.
Shearing

/s/ Agosti, J.
Agosti

/s/ Leavitt, J.
Leavitt

/s/ Becker, J.
Becker

ATTEST: A FULL TRUE AND CORRECT COPY.

CLERK OF THE SUPREME COURT
By /s/ A. Awarado
Deputy Clerk

---

[3] We grant the real parties in interest's motion to file supplemental authority and direct the clerk of this court to file the supplemental authority appended to the motion. We have considered this supplemental authority in resolving the instant petition.

APPENDIX B

INDIAN AFFAIRS: LAWS AND TREATIES. TREATY WITH THE WESTERN SHOSHONI, 1863.

TREATY WITH THE WESTERN SHOSHONI, 1863, Oct. 1, 1863. 18 Stats., 689. Ratified June 26, 1866. Proclaimed Oct. 21, 1869.

Indian Affairs: Laws and Treaties. Vol. II (Treaties). Compiled and edited by Charles J. Kappler.

Washington: Government Printing Office, 1904.

Peace established; depredations to cease. Routes of travel; offenders; safety of travelers. Military posts; stations. Telegraph and overland stage lines. Railway. Explorations, mines, settlements, use of timber. Boundaries of western bands of Shoshoni. Reservations may be established. Annuity, acceptance of, as compensation for loss of game. Presents acknowledged.

Treaty of Peace and Friendship made at Ruby Valley, in the Territory of Nevada, this first day of October A.D. one thousand eight hundred and sixty-three, between the United States of America, represented by the undersigned commissioners, and the Western Bands of the Shoshonee Nation of Indians, represented by their Chiefs and Principal Men and Warriors, as follows:

ARTICLE 1.

Peace and friendship shall be hereafter established and maintained between the Western Bands of the Shoshonee nation and the people and Government of the United States; and the said bands stipulate and agree that hostilities and all depredations upon the emigrant trains, the

mail and telegraph lines, and upon the citizens of the United States within their country, shall cease.

ARTICLE 2.

The several routes of travel through the Shoshonee country, now or hereafter used by white men, shall be forever free, and unobstructed by the said bands, for the use of the government of the United States, and all of emigrants and travellers under its authority and protection, without molestation or injury from them. And if depredations are at any time committed by bad men of their nation, the offenders shall be immediately taken and delivered up to the proper officers of the United States, to be punished as their offences shall deserve; and the safety of all travellers passing peaceably over either of said routes is hereby guarantied by said bands.

Military posts may be established by the President of the United States along said routes or elsewhere in their country; and station houses may be erected and occupied at such points as may be necessary for the comfort and convenience of travellers or for mail or telegraph companies.

ARTICLE 3.

The telegraph and overland stage lines having been established and operated by companies under the authority of the United States through a part of the Shoshonee country, it is expressly agreed that the same may be continued without hindrance, molestation, or injury from the people of said bands, and that their property and the

lives and property of passengers in the stages and of the employes of the respective companies, shall be protected by them. And further, it being understood that provision has been made by the government of the United States for the construction of a railway from the plains west to the Pacific ocean, it is stipulated by the said bands that the said railway or its branches may be located, constructed, and operated, and without molestation from them, through any portion of country claimed or occupied by them.

ARTICLE 4.

It is further agreed by the parties hereto, that the Shoshonee country may be explored and prospected for gold and silver, or other minerals; and when mines are discovered, they may be worked, and mining and agricultural settlements formed, and ranches established whenever they may be required. Mills may be erected and timber taken for their use, as also for building and other purposes in any part of the country claimed by said bands.

ARTICLE 5.

It is understood that the boundaries of the country claimed and occupied by said bands are defined and described by them as follows:

On the north by Wong-goga-da Mountains and Shoshonee River Valley; on the west by Su-non-to-ya Mountains or Smith Creek Mountains; on the South by Wi-co-bah and the Colorado Desert; on the east by Po-ho-no-be Valley or Steptoe Valley and Great Salt Lake Valley.

ARTICLE 6.

The said bands agree that whenever the President of the United States shall deem it expedient for them to abandon the roaming life, which, they now lead, and become herdsmen or agriculturalists, he is hereby authorized to make such reservations for their use as he may deem necessary within the country above described; and they do also hereby agree to remove their camps to such reservations as he may indicate, and to reside and remain therein.

ARTICLE 7.

The United States, being aware of the inconvenience resulting to the Indians in consequence of the driving away and destruction of game along the routes travelled by white men, and by the formation of agricultural and mining settlements, are willing to fairly compensate them for the same; therefore, and in consideration of the preceding stipulations, and of their faithful observance by the said bands, the United States promise and agree to pay to the said bands of the Shoshonee nation parties hereto, annually for the term of twenty years, the sum of five thousand dollars in such articles, including cattle for herding or other purposes, as the President of the United States shall deem suitable for their wants and condition, either as hunters or herdsmen. And the said bands hereby acknowledge the reception of the said stipulated annuities as a full compensation and equivalent for the loss of game and the rights and privileges hereby conceded.

ARTICLE 8.

The said bands hereby acknowledge that they have received from said commissioners provisions and clothing amounting to five thousand dollars as presents at the conclusion of this treaty.

Done at Ruby Valley the day and year above written.

James W. Nye.
James Duane Doty.
Te-moak, his x mark.
Mo-ho-a.
Kirk-weedgwa, his x mark.
To-nag, his x mark.
To-so-wee-so-op, his x mark.
Sow-er-e-gah, his x mark.
Po-on-go-sah, his x mark.
Par-a-woat-ze, his x mark.
Ga-ha-dier, his x mark.
Ko-ro-kout-ze, his x mark.
Pon-ge-mah, his x mark.
Buck, his x mark.
Witnesses:

J.B. Moore, lieutenant-colonel Third Infantry California Volunteers.
Jacob T. Lockhart, Indian agent Nevada Territory.
Henry Butterfield, interpreter.

APPENDIX C

[Elko County Deed Book 49 Page 306]

File No. 69208

HENDERSON BANKING COMPANY MORTGAGE CORPORATION TO UNITED STATES OF AMERICA

THIS INDENTURE, Made the 29th day of May, 1937, between HENDERSON BANKING COMPANY MORTGAGE CORPORATION, a corporation duly organized and existing under and by virtue of the laws of the State of Nevada, with principal place of business in the City of Elko, County of Elko, State of Nevada, the party of the first part, and THE UNITED STATES OF AMERICA in trust for such Indians of the TeMoak Bands of Western Shoshones resident in Nevada as shall be designated by the Secretary of the Interior in accordance with Section 19 of the Indian Reorganization Act, the party of the second part,

WITNESSETH:

That the said party of the first part, in consideration of the sum of FORTY THOUSAND and no/100 ($40,000.00) DOLLARS, lawful money of the United States of America to it in hand paid, by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, margin and sell, unto the said party of the second part, and to its successors and assigns forever, all those certain lots, pieces and parcels of land, situate, lying and being in the County of Elko, State of Nevada, and being bounded and more particularly described as follows, to-wit:

* * *

Land Description Omitted

* * *

TOGETHER with the tenements, hereditaments and appurtenances thereunto belonging, or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO SAVE AND TO HOLD, the said premises, together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto caused its corporate name to be hereunto subscribed, and its corporate seal to be hereunto affixed, attested the day and year in this instrument first above written.

HENDERSON BANKING COMPANY
MORTGAGE CORPORATION
By W. M. WEATHERS PRESIDENT.

CORPORATE SEAL

ATTEST:

L. P. HARRIMAN
SECRETARY.
$40.00 Int. Rev. stamps attached
and cancelled L.P.H. 5/29/37

STATE OF NEVADA,)
) ss.
COUNTY OF ELKO.)

On this 3rd day of June, 1937, personally appeared before me, a Notary Public in and for said County and State, W.M. WEATHERS and L. P. HARRIMAN, known to me to be the President and Secretary respectively of the corporation that executed the foregoing instrument, and upon oath did depose that they are the officers of said corporation as above designated; that they are acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

PEGGY O'NEILL
Notary Public. –

[SEAL]

MY COMMISSION EXPIRES:

June 17th, 1938.

WHEREAS, at the regular meeting of this Board of Directors, at which a full Board was present, held on the 6th day of November, 1936, the Board authorized the sale of the so-called A. M. Griswold Ranch to the United States Indian Service, for the sum of $40,000.00 and authorized an option to be executed therefor, providing said option should be amended to allow the use of growing crops and hay, and the full use of the property until such time as the full payment was received, and that use

of the property would be retained to such an extent so as to dispose of the last crop of hay on said premises, at the time of payment; and

WHEREAS, said option was executed; and

WHEREAS, on April 21, 1937, the Department of Interior exercised said Option and

WHEREAS, it is now necessary for this Corporation to execute a Deed as hereafter after stated,

NOW, THEREFORE, BE IT RESOLVED, that this Corporation sell to the United States of America, in Trust for such Indians of the TeMoak Bands of Western Shoshonse, resident in Nevada, as shall be designated by the Secretary of the Interior in accordance with Section 19 of the Indian Reorganization Act, the so-called A. M. Griswold Ranch, hereinafter described, for the sum of $40,000.00 and

BE IT FURTHER RESOLVED, that W. M. WEATHERS, President and L. P. HARRIMAN, Secretary, be and they are hereby authorized, empowered and directed to execute a deed to the Grantee as above mentioned, for and on behalf of this Corporation, conveying title in and to the following described lands:

* * *

Land Description Omitted

* * *

I, L. P. HARRIMAN, the duly elected, qualified and acting Secretary of Henderson Banking Company Mortgage Corporation, do hereby certify under the seal of said corporation, that the foregoing is a true and correct copy

of a resolution regularly presented and adopted by the Board of Director's of Henderson Banking Company Mortgage Corporation, at a regular Directors' meeting duly called and held at the Directors' Room in the Henderson Bank Building, Elko, Nevada, on the 1st day of June, 1937, at which meeting a quorum was present and voted.

L.P. HARRIMAN
Secretary

CORPORATE SEAL

Filed for record at request of Milton J. Reinhart on the 21 day of Oct. 1938 at 10:00 o'clock A.M.

J. Leslie Carter
County Recorder
By H. B. Wright
Deputy

[Elko County Deed Book 49 Page 72]

FILE NO. 66742

CLARK E. DROWN TO UNITED STATES OF AMERICA IN TRUST FOR INDIANS

THIS INDENTURE, made the 31st day of March A. D. 1938, by and between CLARK E. DROWN, also known as and called C. E. DROWN, a widower, of the County of Elko, State of Nevada, the party of the first part, and THE UNITED STATES OF AMERICA IN TRUST FOR SUCH INDIANS OF THE TENOAK BANDS OF WESTERN SHOSHONES RESIDENT IN NEVADA AS SHALL BE DESIGNATED BY THE SECRETARY OF THE INTERIOR IN ACCORDANCE WITH SECTION 19 OF THE INDIAN REORGANIZATION ACT, the party of the second part,–

WITNESSETH:

That the said party of the first part, for and is consideration of the sum of FORTH THREE THOUSAND EIGHT HUNDRED SEVENTY and no/100 DOLLARS ($43,870.00), current lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, and to its successors and assigns forever, the following lots, pieces and parcels of land situate, lying and being in the County of Elko, State of Nevada, and particularly described as follows, to-wit:–

* * *

Land Description Omitted

* * *

Including all water, water rights, dams and ditches now or heretofore used upon or in connection with the above-described property, and all range and range rights now and heretofore had and used in connection with said described premises and property.

Excepting therefrom all that certain lot, piece or parcel of land situate, lying and being in the southerly portion of NW¼ of SW¼ of Section 17, T. 31 N., R. 57 E., M. D. B. & M., particularly described as follows: Beginning at a point on mound of rock accepted as being the quarter corner between Sections 17 and 18, said Township and Range, running thence S.15.61 chs. to a point at a fence which point is hereby designated and referred to as Point No. 1, thence S. 82°15' E. 15 chs. along said fence to a point; thence S. 71° 15' E. 7.7 chs. along fence to intersection with south boundary of N½ of SW¼ of said Sec. 17; thence W. 22.12 chs. along said boundary to a point; thence at right angles to said last named course 4-45 chs. to fence Point No. 1, heretofore referred to.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, unto the said

party of the second part and to its successors and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand the day and year first above written.

$44.00 Int. Rev. stamps attached
and cancelled 3-31-38 H.U.C.

CLARK E. DROWN
Also known as and called:-
C.E. DROWN

STATE OF NEVADA,)
) SS.
COUNTY OF ELKO.)

On this 31st day of March, A. D. 1938, personally appeared before me, a Notary Public in and for the County of Elko, State of Nevada, - CLARK E. DROWN, also known as and called C. E. DROWN, a widower, - known to me to be the person described in and who executed the above and foregoing instrument; who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the said County and State, the day and year in this certificate first above written.

H. U. CASTLE
- Notary Public -

My commission expires January 20, 1939.

[SEAL]

Filed for record at request of Eugene Drown on the 31st day of March 1938 at 11:15 o'clock A.M.

J. Leslie Carter
County Recorder

[Elko County Deed Book 49 Page 428]

FILE NO. 70022

P. J. OGILVIE, ET UX TO THE UNITED STATES OF AMERICA

THIS INDENTURE, Made the 14th day of November, 1938, between P. J. OGILVIE and ANNIE M. OGILVIE, his wife, of the County of Elko, State of Nevada, the parties of the first part, and THE UNITED STATES OF AMERICA in trust for such Indians of the Te-noak Bands of Western Shoshones resident in Nevada, as shall be designated by the Secretary of the Interior in accordance with Section 19 of the Indian Reorganization Act, the party of the second part,

WITNESSETH:

That the said parties of the first part, in consideration of the sum of FIFTY THOUSAND and no/100 ($50,000.00) DOLLARS, lawful money of the United States of America, to them in hand paid, by the said party of the second part, the receipt where is hereby acknowledged, do by these presents grant, bargain and sell, unto the said party of the second part, and to its successors and assigns forever, all those certain lots, pieces and parcels of land, situate, lying and being in the County of Elko, State of Nevada, and being bounded and more particularly described as follows, to-wit:

* * *

Land Description Omitted

* * *

TOGETHER with all range, ranges and range watering rights of every name, nature,

kind and description used in connection with the above described premises.

TOGETHER with the tenements, hereditaments and appurtenances thereunto belonging, or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, the said premises, together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever.

IN WITNESS WHEREOF, said parties of the first part have hereunto set their hands the day and year first above written.

$50.00 Int. Rev. Stamps attached and cancelled P.J.O. 11/14/38

P.J. OGILVIE

ANNIE N. OGILVIE

STATE OF NEVADA,)
) ss.
COUNTY OF ELKO,)

On this 21st day of November, 1938, personally appeared before me, a Notary Public in and for said County and State, P. J. OGILVIE and ANNIE W. OGILVIE, his wife, known to me to be the persons described in and who executed the foregoing instrument; who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official seal the day and year in this Certificate first above written.

[SEAL]

PEGGY O'NEILL
Notary Public

My commission expires:
June 17, 1942

Filed for record at request of Milton J. Reinhart on the 5 day of April 1939 at 10:00 o'clock a.m.

Gertrude M. Williams
County Recorder

[Elko County Deed Book 46 Page 366]

FILE NO. 52151. –

A.M. GRISWOLD ET UX TO HENDERSON BANKING COMPANY

THIS INDENTURE, Made the 24th day of May, one thousand nine hundred and thirty-two.

BETWEEN A.M. GRISWOLD and NEVADA E. GRISWOLD, his wife, of the County of Elko, State of Nevada, the parties of the first part, and HENDERSON BANKING COMPANY, a Nevada Banking Corporation, the party of the second part,

WITNESSETH: That the said parties of the first part, in consideration of the sum of TEN and no/100 Dollars lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain and sell, unto the said party of the second part, and to its successors and assigns, forever: All those certain lots, pieces and parcels of land, situate, lying and being in the County of Elko, State of Nevada, and being more particularly bounded and described as follows, to-wit:

* * *

Land Description Omitted

* * *

Containing app. imately 5840 acres, more or less.

Together with all water, water rights, dams and ditches now or hereto used upon or in connection with the above described premises.

TOGETHER with the tenants, hereditments and appurtenances thereunto belonging, or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, the said premises, together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever.

IN WITNESS WHEREOF, the said parties of the fist part have hereunto set their hands the day and year first above written.

A.M. Griswold
Nevada E. Griswold

STATE OF NEVADA,)
) ss.
County of Elko.)

On this twenty-fourth day of May A.D., one thousand nine hundred and thirty-two personally appeared before me, PEGGY O'NEILL, a Notary Public in and for the said County of Elko, A.M. GRISWOLD and NEVADA E. GRISWOLD, his wife, known to me to be the persons described in and who executed the foregoing instrument, who acknowledged to me that they executed the same, freely and voluntarily, and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal in the County of Elko, the day and year in this Certificate first above written.

Peggy O'Neill
Notary Public in and for
the County of Elko, State of
Nevada (SEAL)

Filed for Record at the Request of Henderson Bank, July 15th, A.D. 1958 at 15 min. past 3 o'clock P.M.,

Wm Rigsby
Recorder.

[Elko County Deed Book 47 Page 132]

File No. 57626

HENDERSON BANKING COMPANY TO HENDERSON BANKING COMPANY MORTGAGE CORPORATION

THIS INDENTURE, Made this 16th day of May, 1934, between HENDERSON BANKING COMPANY a Banking Corporation organized and existing under and by virtue of the laws of the State of Nevada, the party of the first part, and HENDERSON BANKING COMPANY MORTGAGE CORPORATION, a corporation organized under and by virtue of the laws of the State of Nevada, the party of the second part,

WITNESSETH:

That WHEREAS, the party of the first part is a banking corporation duly incorporated and existing under and by virtue of the laws of the State of Nevada, and as such banking corporation acquired certain properties hereinafter described; and

WHEREAS, the Directors of said corporation duly assembled, duly passed the following resolution: "BE IT RESOLVED that WHEREAS, on the 8th day of March, 1934, in action No. 4661, in the First Judicial District Court of Nevada in and for the County of Ormsby, entitled Foreest W. Ecoles, et al, Plaintiff, vs Henderson Banking Company, a Nevada Banking Corporation, et al., Defendants, there was entered an Order wherein said Henderson Banking Company, a Nevada Banking Corporation and E. J. SEABORN, Superintendent of Banks in charge of said Henderson Banking Company were

ordered and directed to convey to a corporation to be formed for that purpose, all of the assets and property of every name, nature, kind and description belonging to said Henderson Banking Company; and

WHEREAS, in compliance with the direction of said Order HENDERSON BANKING COMPANY MORTGAGE CORPORATION a Nevada corporation was formed to take over the assets of said HENDERSON BANKING COMPANY: and

WHEREAS, the capital stock of said HENDERSON BANKING COMPANY MORTGAGE CORPORATION has been issued to the depositors of said Henderson Banking Company.

NOW, THEREFORE, IT IS RESOLVED by the Board of Directors of said Henderson Banking Company, a Nevada Banking Corporation, duly convened, that said Henderson Banking Company comply with the order and direction of said Court hereinbefore mentioned, and convey to HENDERSON BANKING COMPANY MORTGAGE CORPORATION, a Nevada Corporation, all of the assets, real, personal or mixed of every name, nature, kind and description belonging to said Henderson Banking Company, and that GEO. WINGFIELD, its President and HAIDEN HENDERSON, its Secretary, be and they are hereby authorized and directed to make, execute and deliver for and in behalf of said Henderson Banking Company, and as its act and deed to and HENDERSON BANKING COMPANY MORTGAGE CORPORATION, all necessary conveyances to carry all of the property of said Henderson Banking Company of every name, nature, kind and description to said HENDERSON BANKING

COMPANY MORTGAGE CORPORATION, and to affix to said conveyances the corporate name and seal of said corporation."

NOW, THEREFORE, in pursuance of said Resolution as aforesaid, and in consideration of the sum of ONE ($1.00) DOLLAR, lawful money of the United States in hand paid to said party of the first part, by said party of the second part, the receipt whereof is hereby acknowledged, and in compliance with the Order of Court above mentioned (the same being the actual consideration, and this being a confirmation deed, no revenue stamps required) said party of the first part does by these presents grant, bargain and sell unto the said party of the second part, and to its successors and assignees forever

> All of the right, title, interest and claim of the party of the first part in and to those certain lots, pieces or parcles of land, more particularly bounded and described as follows, to-wit:
>
> * * *
>
> Land Description Omitted
>
> * * *

TOGETHER with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, the said premises, together with the appurtenances, unto the said party of the second part, and to its successors and assignees forever.

IT WITNESS WHEREOF, said party of the first part by resolution of its Board of directors has caused these presents to be subscribed by its President and Secretary and its corporate name and seal to be hereunto affixed, the day and year first above written.

(CORPORATE SEAL)

HENDERSON BANKING
COMPANY
By Geo Wingfield
President. –

ATTEST:
Hayden Henderson
Secretary. –

STATE OF NEVADA,)
) ss.
COUNTY OF WASHOE.)

On this 16th day of May, 1934, personally appeared before me, a Notary Public in and for the County and State aforesaid, GEO. WINGFIELD, known to me to be the President of the corporation that executed the foregoing instrument, and upon oath did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation, and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year in this Certificate first above written.

(SEAL)

M. Rice
Notary Public in and for the County of Washoe, State of Nevada.

My Commission Expires:
Jan. 24, 1938

STATE OF NEVADA,)
) ss.
COUNTY OF ELKO.)

On this 16th day of June, 1934, personally appeared before me, a Notary Public in and for the County and State aforesaid, HAYDEN HENDERSON known to me to be the Secretary of the corporation that executed the foregoing instrument and upon oath did depose that he is the officer of said corporation as above designated, that he is acquainted with the seal of said corporation, and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporations indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official Seal the day and year in this Certificate first above written.

(SEAL)
My Commission Expires:
Sept 11 – 1935

Milton J. Reinhart
Notary Public in and for the County of Elko, State of Nevada.

Filed for record at request of Griswold & Reinhart, on the 16th day of June, 1934 at 10:55 o'clock A.M.,

Wm Rigsby
County Recorder

APPENDIX D

No. 2804

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF HUMBOLDT

In the Matter of the Determination of the Relative Rights of Claimants and Appropriators of the Waters of the Humbolt River System and Tributaries.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE

GRAY MASHBURN, *Attorney-General.*
M. A. DISKIN, *Special Deputy Attorney-General.*

Filed this 20th day of October, 1931
J.W. DAVEY, *Clerk*

THE BARTLETT DECREE

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that except such persons as may have acquired rights to the use of the water of Humboldt River stream system and its tributaries granted under applications to the State Engineer under and by virtue of the provisions of the statute, no person other than the parties named herein have or claim any interest in or to said water or in or to the use of said water or any part thereof.

That the order of the rights of the respective appropriators of the waters of said stream and its tributaries, and in which order they are entitled to divert and use the said water [for the period or season or time of year in

which the said right attached as herein provided] shall be and is [within the districts hereinafter created], according to the date of the relative priority of the right as herein set forth and determined, and the first in order of time according to the date of relative priority shall be and is the first in order of right, and so on, down to the date of the latest priority, and those having prior rights are entitled to divert and use the waters of said stream and its tributaries when necessary for the beneficial use in connection with the irrigation of their respective lands, or other useful and beneficial purposes for which they are decreed a right of use, at all times and against those having subsequent rights, without let or hindrance, and whenever the water is not required by the appropriator having a prior right to its use for the purpose for which said water was appropriated, he must and shall permit it to flow down in the natural channel of the stream as it was wont to flow in its natural course, without hindrance or diversion thereof, and those having subsequent rights are entitled to the use of such water and to divert the same to the extent of their rights of appropriations, according to the order of their priority rights; and at all times the waters diverted shall be beneficially, economically and reasonably used without waste by those having a right to do so by reason of the priority of their rights.

That the rights of appropriation hereby confirmed are appurtenant to the lands herein described for irrigation purposes, and the right of use of the waters of said stream and its tributaries by virtue of such rights of appropriation are limited and confined to the irrigation of the lands described herein to the extent of said lands as herein set forth, and the priorities herein confirmed confer no right of use of the waters of said stream, and its

---

NOTE: – The words between brackets ordered stricken by Judge H. W. Edwards, see page 10, Sec. 2, Intervening Orders.

tributaries, on the lands other than those specified tracts to which such rights of appropriation are herein set forth as appurtenant. The right of a water user to change the place of use of a vested water right, in the manner, now or hereafter, provided or permitted by law shall not be prohibited or affected by this decree.

That in all cases where decrees of the Court or agreements of the parties have been filed in these proceedings, which said agreements or decrees have* not been mentioned in these findings, the water master shall distribute water as between the parties to said decree or agreements so long as such distribution does not interfere with any prior rights of claimants or appropriators not subject to or bound by such decree or agreements; but whenever the distribution of water in accordance with said decrees or agreements does interfere with any such prior rights, then said water may be distributed by the water master in accordance with this decree.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that for the purpose of distributing the waters of the Humboldt stream system and its tributaries in accordance with the provisions of this decree [the said stream system is hereby divided into two districts known as District No. 1 and District No. 2. District No. 1 is all that portion of the Humboldt River stream system and its tributaries being all the lands located below Palisade. District No. 2, known as the upper district, and consisting of all lands above Palisade.

That the State Engineer or Water Commissioner in the distribution of water shall distribute all water flowing in said stream system prior to May 15 to the claimants and appropriators situated in District No. 1. That all

---

*Ordered, amended by inserting the words "or have" by Judge H. W. Edwards, see page 10, Sec. 2, Intervening Orders.

water flowing in said stream after May 15 shall be distributed to clainmants [sic] and appropriators situated in the upper district or district No. 2; that such distribution shall continue in said upper district until all priorities of a date equal to the date of priorities served in the lower district have been served; that after the serving of equal priorities in the upper district, if sufficient water is flowing in the river to reach claimants in the lower district, without waste, keeping in mind the location of the various places of use, the conditions of the stream flow, the season of the year, and the matter of transmission loss, evaporation and seepage, and equal distribution of the water between district No. 1 and district No. 2 shall be made to serve equal priorities.]

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that subject to section 36a* of the Water Code, as amended, the beginning and ending of the irrigation season shall be as defined in this Decree except when climatic conditions are such that irrigation is not in accordance with good husbandry and actual beneficial use of water. The State Engineer shall then determine by examination the beginning of the irrigation season and shall set the date, giving notice to all water users on said stream system. The setting of this date shall be for the sole purpose of administration and distribution of the waters of the Humboldt stream system and its tributaries in accordance with this Decree.

[That the rate of flow in District No. 1 is based upon an irrigation system of the following approximate lengths: 180 days for Class A lands, 90 days for Class B

NOTE: – All language between brackets ordered stricken and new paragraph substituted by Judge H. W. Edwards, see pages 10-11, Sec. 2, Intervening Orders.

*Ordered amended by inserting "Sec. 36½" by Judge H. W. Edwards, see page 11, Sec. 2, Intervening Orders.

lands, 45 days for Class C lands. That in District No. 2 the rate of flow for an irrigation season is as follows: 120 days for Class A lands, 60 days for Class B lands, and 30 days for Class C lands.

The State Engineer and Water Commissioner in distributing water to appropriators of the two districts will give due consideration to the head required to distribute the water over the land and to the water which returns to the stream system.]

That the claimants and appropriators or their successors in interest will not be required to take or use the amount of water allotted to them in a continuous flow, but may cumulate the same or any part thereof in rotation or periodic turn within the seasonal limits with the approval of the Water Commissioner and subject to the control and direction of the State Engineer.

Upon lands where conditions render it impossible to measure the amount of water diverted upon the land the duty of water as allotted will be modified and based upon that time limit of irrigation which is found to be most consistent with good husbandry; that where the classification of areas as herein indicated has been changed by any appropriator and the cultivated area reduced to a lower culture, the State Engineer or Water Commissioner shall allow the diversion of only so much water as is applicable to the then growing crop area.

All measurements of amounts diverted are to be made at the point where the main ditch enters or becomes adjacent to the land to be irrigated or as near thereto as practicable, the location if not selected by the State Engineer to be approved by him. Each water user shall install

---

NOTE: – All language between brackets ordered stricken and new paragraph substituted by Judge H. W. Edwards, see page 11, Sec. 2, Intervening Orders.

and maintain substantial headgates and weirs in his ditch or ditches. Due allowance for losses in ditches will be made by the State Engineer in case it becomes necessary to divert additional water into said ditches.

Priorities are fixed by years and where the years are the same the priorities are equal unless otherwise specifically set forth.

In all cases where the acreages irrigated are bracketed with legal subdivisions, the water allotted is appurtenant to one or more legal subdivisions or parts of legal subdivisions within such bracket, but limited to the aggregate acreage and amount of water indicated for such bracket.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all claimants herein for water for irrigation shall be entitled to use such water for stock and domestic purposes. That the right to the diversion and use of the water for stock and domestic purposes shall be continued by such claimants and such water users at any time during the year, and such diversion shall be according to the dates of priority of such claimants, and such use shall be limited to the quantity of water reasonably necessary for stock and domestic purposes; that during the irrigation season the amount of water diverted for irrigation purposes shall not be increased by any amount to be used for stock and domestic purposes, but the quantity allowed and diverted for irrigation during the irrigation season includes the water for stock and domestic purposes.

That the duty of water of the cultured area is as follows: Harvest Crop, 3 acre feet; Meadow Pasture, 1.5 acre feet; and Diversified Pasture, .75 of an acre foot.

Harvest crop acres Class A, include all lands devoted to cultivated crops, also all irrigated native or other grass lands which normally receive sufficient water to produce

a crop which will justify cutting for hay, although it may sometimes be pastured and not cut.

Meadow pasture Class B, includes all grass lands free from brush which receive sufficient water to produce what may be classed as good pasture but not sufficient to warrant cutting for hay.

Diversified pasture Class C, includes all lands from which the brush has not been cleared but which are artificially irrigated to some extent for the production of grasses for pasturage. These lands shall be* watered only when the stream is in flood or when there is excess water above the needs of higher class culture. Also, this classification includes those areas in the irrigated fields which are grown up with willows, and the depression or other acres covered with tules and flags, if there is grass amongst them. While these latter areas generally receive as much or more water than is required for the higher class of culture, the excess water cannot be considered as being used beneficially, hence the right to divert it is not recognized.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that except as indicated in the Decree, all objections filed to the Final Order of Determination are hereby denied and overruled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that no claimant or appropriator along the stream system or its tributaries has a prescriptive right to the use of waters of said stream system or its tributaries.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each and every water user and claimant to the Humboldt stream system and its tributaries and

---

*The words "shall be" ordered stricken and the words "are usually" inserted in lieu thereof by Judge H. W. Edwards, see page 7, Sec. 2, Intervening Orders.

each of their agents, attorneys, servants and employees, and their successors in interest and all and every person or persons acting in aid or assistance of the said parties or either of or any of them be, and that each of them is, hereby perpetually enjoined and restrained as follows, to wit:

(a) From at any time diverting or using any of the water of the Humboldt stream system and its tributaries hereinbefore mentioned, except to the extent and in the amount and in the manner and at the time or times set by this Decree to such respective party hereto allotted, allowed, prescribed and determined, or allowed by permits which have been or may hereafter be granted by the State Engineer of the State of Nevada.

(b) From diverting from the natural channel and from using any of the said water for irrigation or for any other purpose, in excess of the specific allotment herein set by this Decree, or in excess of the specific allotment under a permit granted or that may hereafter be granted by the State Engineer of the State of Nevada.

(c) From diverting from the natural channel and from using any of the said water in any other manner or for any other purpose or purposes or upon any other land or lands than as provided and prescribed by the terms of this Decree or by a permit granted or that may hereafter be granted by the State Engineer of the State of Nevada.

(d) From diverting from the natural channel and from using any of the said water at any other time or times than as specified and provided by the terms of this Decree or by a permit granted or that may hereafter be granted by the State Engineer of the State of Nevada.

(e) From in any manner meddling with, opening, closing, changing, injuring, or interfering with any headgates, weirs, water box, flume or measuring device, placed, installed or established by the State Engineer or

by his authority or direction, unless such act be done by the permission or authority of the Water commissioner, if during the period of his regulation or control of said water, or if not done during such period, then by virtue of the allowances, authority, terms and provisions of this Decree or by a permit granted or that may hereafter be granted by the State Engineer of the State of Nevada.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the costs in this proceeding amounting to ___ dollars is hereby assessed proportionately to claimants and appropriators of the Humboldt stream system and its tributaries based upon the amount of acreage set forth in this Decree to which water has been allotted.

Dated this 20th day of October, 1931.

GEO. A. BARTLETT,
Former District Judge Presiding at the Trial.

APPENDIX E

No. 2804

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF HUMBOLDT

In the Matter of the Determination of the Relative Rights of Claimants and Appropriators of the Waters of the Humboldt River Stream System and Its Tributaries.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE

H.W. Edwards,
Former Judge Presiding.

Filed this 8th day of October, 1935
J. W. Davey, *Clerk*

The Edwards Decree

It Is Further Ordered, Adjudged and Decreed that the Clerk of the above-entitled Court be, and he hereby is, directed and ordered to amend, change and correct the printed copy of the Findings of Fact, Conclusions of Law and Decree of date, and filed in the above-entitled Court and matter. October 20, 1931, so as to make said Findings of Fact, Conclusions of Law and Decree, conform to and with these "amended, changed and corrected Findings of Fact, Conclusions of Law and Decree" by striking from the printed copy all that portion of page 31 beginning with the word "L. N. Carpenter" and down to and including the figures "1905" on page 46 thereof, and by striking all other matters of a similar nature appearing in the

Decree proper where those persons' rights have been set forth, so as to make the Decree. when so corrected, eliminate all matter referred to in the Findings of Fact appearing at pages 31 to 46 aforesaid.

H. W. EDWARDS,
Judge Presiding.

Dated this 7th day of October, 1935.